

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

LIQUOR AMENDMENT BILL 2023

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Shane Rattenbury MLA**

LIQUOR AMENDMENT BILL 2023

The Bill is **not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The purpose of the Bill is to make amendments to the *Liquor Act 2010* and *Liquor Regulation 2010* to strengthen the existing framework relating to security measures for licensed venues.

CONSULTATION ON THE PROPOSED APPROACH

On 7 March 2022, the Attorney General and the Minister for Business and Better Regulation convened and chaired a Security Camera Roundtable. The Ministers spoke with liquor industry representatives to discuss potential options to strengthen the existing security framework for licenced venues.

The need to consider strengthening the existing security measures framework arose following a 2021 police investigation of an alleged sexual assault at an ACT nightclub that was hindered because of the club's failure to retain security camera footage for a prescribed period, contrary to the nightclub's legal obligation to do so under the *Liquor Act 2010*.

Following this officers of the Justice and Community Safety Directorate consulted with community and liquor industry stakeholders, Liquor Advisory Board members and the Australia New Zealand Policing Advisory Agency, as well as government agencies including the Chief Minister, Treasury and Economic Development Directorate (specifically the Better Regulation Taskforce and Access Canberra as the ACT's liquor licensing regulator), ACT Policing, the ACT Human Rights Commission and the ACT Parliamentary Counsel's Office on the formulation and development of the proposed amendments for inclusion in this Bill.

The proposed amendments seek to bolster the effectiveness of security camera coverage for venues, creating consistent and mandatory obligations for bar and nightclub licences, including mandatory security image retention period.

The proposed amendments are intended to create certainty and clarity around obligations while minimising the financial impact on liquor licence holders.

The proposed amendments will also function as a deterrent to violent incidents in the first instance and to support venues and police in conducting thorough investigations into incidents of violence where they occur at venues.

CONSISTENCY WITH HUMAN RIGHTS

Rights Limited

1. Nature of the right and the limitation (ss 28(2)(a) and (c))

The proposal limits the right to privacy (*Human Rights Act 2004*, section 12), which states that everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and not to have their reputation unlawfully attacked.

The Bill creates a statutory obligation on bars and nightclubs to capture, use and disclose security camera images.

The public generally has a lesser expectation of privacy in public spaces, including licenced bars and nightclubs where alcohol is consumed. However, video surveillance within public places, and retention of persons' images, still amount to limitations on the right to privacy. Any such limitation must feature adequate and effective safeguards against unauthorised disclosure, retention or misuse of a person's image.

Human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Limitations on the right to privacy must be no more restrictive than those necessary and proportionate to realising their intended policy objectives.

The right to privacy does not only guarantee protection from arbitrary or unlawful limitations of privacy by government; it also obliges governments to take relevant measures to protect individuals from such interferences by private parties.

2. Legitimate purpose (s 28(2)(b))

The objective sought to be achieved by the Bill is to protect public safety and to promote a fair justice system that deals with matters, including crimes, in a reasonable and expeditious manner. The proposals will strengthen deterrence of violent incidents in licensed venues and support thorough police investigations into incidents that occur.

3. Rational connection between the limitation and the purpose (s 28(2)(d))

ACT Policing have cited recent incidents of assault and misadventure in licensed venues and indicated that these investigations may have resulted in convictions, been solved, or been solved more quickly with less expenditure of police resources, had security cameras been utilised correctly. Delays in investigation have a negative impact on victims of crime in licensed venues, and on preventing future crimes.

The approach chosen will ensure that evidence is available to police when needed, which will result in more thorough investigations of violent incidents in licenced venues. The CCTV requirements are also intended to provide certainty for affected liquor licensees about their obligations by providing an unambiguous, standardised retention period for security images and by setting the retention period at a time determined to be the minimum to achieve the required outcome.

The means proposed to achieve greater public safety is to provide venues and police with sufficient opportunity to obtain and review security images, noting that in some cases, victims of violent incidents may take some time before reporting such incidents.

4. Proportionality (s 28(2)(e))

In deciding whether the proposed limit on the right to privacy is reasonable, the government has considered:

- a) as noted above, the public generally has a lesser expectation of privacy in public. However, video surveillance and retention of an individual's image will still impact the right to privacy.
- b) the proposed amendments are an important step in strengthening deterrence of violent incidents in licensed venues and supporting thorough investigations into incidents of violence that occur;
- c) In choosing to limit the right to privacy in this manner, the government seeks to apply the least restrictive means reasonably available to achieve its objective to provide greater protection for members of the public visiting the circumscribed venues;
- d) The government has not identified a less restrictive means reasonably available to it to achieve the increased protection for members of the public as set out above.

The proposed legislation will incorporate the following safeguards requiring that security camera images being stored for at least 30 days, but for no longer than 90 days, after which the security images must be deleted. Following detailed research of security camera protocols across other jurisdictions, the Government has determined that a minimum of 30 days retention of footage meets the standards of best practice in ensuring that the public can have a reasonable expectation that potential evidence will be retained for a reasonable period of time after an incident occurs to account for a natural reticence of some victims of violence to report incidents immediately, while also balancing the impact on an individual's privacy and ensuring that security footage is not retained by licensees for longer than necessary.

Other safeguards include:

- The Bill requires that, as far as possible each security camera in a licenced bar or nightclubs will be clearly visible to people at the premises or on the land under the control of the licensee in the vicinity of the licensed premises;
- A requirement that a sign must be displayed at or near each entrance to the premises or other land under the control of the licensee in the vicinity of the licensed premises that indicates that security cameras are used on the premises and that the person may recorded while present there;
- Signs will contain contact details and link to more detailed information (i.e. how long security camera images may be held and how a person can raise any concerns). The requirement for signs will be included in the Liquor Regulation 2010 and detail related to the content to be included in signs will be addressed in a guideline to be issued by the regulator, Access Canberra.

LIQUOR AMENDMENT BILL 2023

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the Liquor Amendment Bill 2023. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Clause 1 – Name of Act

The name of the Act is the *Liquor Amendment Act 2023*.

Clause 2 – Commencement

This clause provides that the regulation commences 3 months after its notification day.

Clause 3 – Legislation amended

This clause sets out that the Act amends the *Liquor Act 2010* (the Liquor Act) and the *Liquor Regulation 2010* (the Liquor Regulation).

Part 1 Liquor Act 2010

Clause 4 – Commissioner or police may direct licensee to give security camera images

Section 145A (1) (a)

This clause substitutes existing Section 145A (1) (a) of the Liquor Act (which refers to licensees who have fitted 1 or more security cameras in accordance with a condition a condition imposed by the commissioner under section 31 (2) (b) of the Liquor Act) to include licensees who have fitted 1 or more security cameras in accordance with a condition prescribed by regulation under section 31 (2) (a) of the Liquor Act.

Part 2 Liquor Regulation 2010

Clause 5 – Licence conditions—requirements for security cameras—Act, s 31 (4)

Section 7A (3) (c)

Section 7A relates to requirements prescribed by regulation in relation to security cameras, as permitted under section 31 (4) of the Liquor Act.

This clause substitutes existing Section 7A (3) (c) of the Liquor Regulation (which requires that security camera images be stored by the licensee for at least 30 days) to prohibit security cameras being stored by the licensee for more than 90 days.

Clause 6 – Licence conditions

Schedule 1, new part 1.3A

This clause inserts new Part 1.3A into schedule 1 to provide security camera conditions for all bar and nightclub licences issued at any time. To the extent of any inconsistency, these conditions prevail over a condition imposed by the commissioner under Section 31 (2) (b) of the Liquor Act.

This part requires that security cameras be fitted and operated on licensed premises for a bar licence or nightclub licence and any other land under the control of the licensee in the vicinity of the premises. The new Section 1.13c requirements for security cameras mirror the Section 7A requirements, including the new, substituted Section 7A (3) (c) of the Liquor Regulation which limits the retention period for security camera images to 90 days.

Clause 7 – Schedule 1, new sections 1.17A and 1.17B

Section 1.17A requires that security cameras at licensed premises, or on any other land under the control of the licensee in the vicinity of the licensed premises, must be installed so that, insofar as possible, the cameras are clearly visible to persons who enter those locations. This condition applies to all liquor licences issued at any time.

To direct such person's attention to that fact that they may be recorded, Section 1.17B requires that security cameras at licensed premises, or on any other land under the control of the licensee in the vicinity of the licensed premises, must have a sign be displayed at or near each entrance to the premises or land, stating that people may be recorded at those locations. This condition applies to all liquor licences issued at any time.